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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1936.

No. 18

M. J. PUFAHL, RECEIVER OF THE AUSTIN NATIONAL BANK OF CHICAGO, ILLINOIS, A CORPORATION,
Petitioner,

vs.

ESTATE OF ELVIRA J. PARKS, DECEASED,
Respondent.

ANSWER OF RESPONDENT TO SUPPLEMENTAL MEMORANDUM FILED ON BEHALF OF PETITIONER.

EMMETT J. McCARTHY,
ROBERT F. CAREY,
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We beg leave to reply very briefly to the Supplemental Memorandum filed by petitioner, which seems to contain some new matter not included in his original brief.

We shall not attempt to controvert Petitioner's contention that the probate courts of Illinois have equitable jurisdiction in connection with the settlement and allowance of claims against estates of decedents. Even then, however, we are confronted with the following question:

"Could the probate court of Cook County have legally allowed the instant claim, without qualification, against the estate of the deceased stockholder and ordered the Executors to pay same in due course of administration out of inventoried assets?" We believe that many of the cases cited in Respondent's brief answered this question in the negative but, for the sake of brevity, we desire to refer to only two. The first one, *Stone* v. *Clarkes, Administrators*, 40 Ill. 411, is authority for the proposition that a contingent claim presented after the lapse of time provided for the filing of claims against the estates of decedents is barred as against the administrator, except as to assets discovered and inventoried after the expiration of the period for filing claims. The *Stone* case, *supra*, is the leading case in Illinois and has been approved repeatedly by the Illinois courts and may be considered as stating the settled law of Illinois.

The other case to which we refer is *Chicago Title & Trust Co.* v. *Fine Arts Building*, 288 Ill. 142, 156 and 157. This case is authority for the proposition that a contingent claim becoming absolute after the expiration of the time for filing claims cannot share in inventoried assets, even though the estate be not closed and there be undistributed assets in the hands of the Executors.

In both of the above cases the decisions of the Supreme Court were rendered on original appeals from probate or county courts, which courts have the same jurisdiction in Illinois with reference to probate of estates of decedents. Equity powers which such courts are shown to possess by the cases cited in petitioner's "Memorandum" must have been taken into consideration by the courts of last resort which decided the cases in question.

It is of course fundamental that equity follows the law. After a particular field of law has been completely oc-

cupied by statutory enactment and by decisions of the courts of last resort, it would seem to leave no ground for the interposition of purely equitable principles. It will be noted that in none of the cases cited in petitioner's "Memorandum" is there any holding that the probate courts may, under any circumstances depart from the provisions of the Statute of Non-Claim.

We do not wish to be understood as saying that a court of general equity power might not, upon presentation of recognized grounds of equity jurisdiction, obtain relief not inconsistent with the statutory law of Illinois, but supplementary thereto. However, the right of the probate courts to give such relief has been foreclosed by the decisions of the Supreme Court of Illinois.

We believe that the remainder of petitioner's "Memorandum" is occupied with merely a restatement of arguments already made in his brief, and inasmuch as same have been answered in our brief we refrain from answering them here.

Respectfully submitted,

EMMETT J. MCCARTHY,
ROBERT F. CAREY,
Counsel for Respondent.

FRANZ W. CASTLE,
Of Counsel.